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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-460

CLAY L. SHAW,

Respondent-
Appellee Below,

versus

JIM GARRISON,

Petitioner-
Appellant Below.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF OF RESPONDENT IN OPPOSITION

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CLAY L. SHAW opposes the petition of JIM GARRISON for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

I.

OPINIONS BELOW

The opinions below are correctly set forth in the Appendix to the petition.

II.

JURISDICTION

The jurisdiction is correctly stated by the petition.

III.

QUESTIONS PRESENTED

The petition does not accurately state the questions presented for review by the Court.

The questions presented by this petition have recently been decided by this Court in *Mitchum vs. Foster*, 407 U.S. 225 (1972), and *Younger vs. Harris*, 401 U.S. 37 (1971) and its companion cases, and *Perez vs. Ledesma*, 401 U.S. 82, (1971).

The questions presented are:

1. The right of a Federal Court to enjoin a pending State Court criminal proceeding where irreparable injury is "both great and immediate." 401 U.S. 46, where the state law is "flagrantly and patently violative of express constitutional prohibitions", 401 U.S. 53, or where there is a showing of "bad faith, harassment or ... other unusual circumstances that would call for equitable relief". 401 U.S. 54.

2. Whether Title 42 U.S.C. 1983 is an express exception to the Anti-Injunction Statute, 28 U.S.C. 2283.

The District Court made extensive and detailed findings of fact. It characterized the facts as "unique and bizarre" and held that "the perjury charge was

brought in bad faith and for purposes of harassment ... such bad faith constitutes irreparable injury which is great and immediate." 328 F.Supp. 400. The Court found as a fact that the "special circumstances" of *Younger* were proven by Shaw and granted injunctive relief prohibiting his prosecution on the perjury charge. The Court had the benefit of this Court's decisions in *Younger vs. Harris* and its companion cases and relied on them extensively.

The District Court likewise decided that Section 1983 does constitute an express exception to Section 2283.

The Appellate Court affirmed the decision of the District Court. It took note of the fact that the decision of the District Court that Section 1983 was an express exception to Section 2283 has now been confirmed by this Court in its decision in *Mitchum vs. Foster*. The Appellate Court found that it was "unnecessary to go beyond the bad-faith nature of the perjury prosecution to affirm the judgment."

Relying on what is an obvious typographical error, the petition attacks the decision of the Appellate Court and accuses it of having a "cavalier attitude" and "lack of independent thought." (Footnote, Page 6) There is no merit to such a charge. The injunction issued by the Trial Court enjoined and prohibited Garrison from prosecuting Shaw for perjury. Obviously there was no perjury trial. These proceedings were initiated by Shaw's application for an injunction enjoining and prohibiting Garrison from prosecuting him for perjury. There was a trial on Shaw's request for a permanent injunction, and it was at this hearing that

Garrison's star witness, Russo, invoked the Fifth Amendment. Applications for certiorari, based upon such frivolous grounds as this are without substance or merit.

No new or serious constitutional question is presented by the petition. The questions presented by the petition, when accurately and correctly stated, have recently been decided by this Court, and this Court's decisions in those cases have been accurately and faithfully adhered to, both by the District Court and the Appellate Court.

IV.

STATUTES INVOLVED

The petition correctly states the statutes involved.

V.

STATEMENT OF THE CASE

Both the District Court and the Appellate Court correctly and accurately stated the case, the course of the proceedings conducted in the Trial Court, and the facts presented for review. Their decisions are set forth verbatim in the appendix to the petition.

The petition does not present an accurate statement of the case. As presented, it is both inaccurate and incomplete.

For example, no mention is made of the fact that Garrison produced no witnesses, and introduced no evi-

dence whatsoever, to contradict or rebut the wealth of evidence presented on behalf of Shaw during three full days of trial in the District Court. No mention is made of the numerous findings of fact by the Trial Court in support of its conclusion that Garrison was acting in bad faith for purposes of harassment only, as a result of which Shaw's constitutional rights were being violated. No mention is made of the fact that Garrison charged Shaw with perjury, on the very first working day, following Shaw's acquittal, after forty-one days of trial, on charges that he conspired with Lee Harvey Oswald to assassinate John F. Kennedy, late President of the United States. The inaccuracies and the incompleteness of the statement of the case as presented by the petition are too numerous to set forth in detail and are best reflected by the opinions below.

VI.

REASONS FOR DENYING THE WRIT OF CERTIORARI

The decision below is clearly correct in holding that where it is alleged and established, as it has been here, that a State Court proceeding is not being conducted for legitimate purposes, but in bad faith for purposes of harassment, as a result of which the citizen will suffer irreparable injury, great and immediate, neither Section 2283, federalism or comity, prevent or prohibit the issuance of an injunction restraining a State Court proceeding. That such is the case was made quite clear by this Court in *Younger vs. Harris* and its companion cases, and in *Mitchum vs. Foster*. In these cases, this Court has made it abundantly clear that

injunctive relief against State Court criminal proceedings is available to the citizen, where it is established that the state official is acting in bad faith, for purposes of harassment only, as a result of which the citizen's constitutional guarantees, regardless of which ones they may be, are being violated, or will be violated unless the federal court does intervene; nor is it essential to injunctive relief for the citizen to show a violation of First Amendment rights. Injunctive relief is available for the protection of any and all constitutional guarantees upon a showing of bad faith, harassment, irreparable injury, great and immediate. These principles were affirmed by this Court in *Mitchum vs. Foster:*

> "In Younger, this Court emphatically reaffirmed "the fundamental policy against federal interference with state criminal prosecutions." 401 U.S. at 46, 91 S.Ct. at 751. It made clear that even "the possible unconstitutionality of a statute 'on its face' does not in itself justify an injunction against good-faith attempts to enforce it." 401 U.S. at 54, 91 S.Ct. at 755. At the same time, however, the Court clearly left room for federal injunctive intervention in a pending state court prosecution in certain exceptional circumstances — where irreparable injury is "both great and immediate," 401 U.S. at 46, 91 S.Ct. at 751, where the state law is "flagrantly and patently violative of express constitutional prohibitions," 401 U.S. at 53, 91 S.Ct. at 755, or where there is a showing of "bad faith, harassment, or ... oth-

> er unusual circumstances that would call for equitable relief." 401 U.S. at 54, 91 S.Ct. at 755. In the companion case of Perez v. Ledesma, 401 U.S. 82, 91 S.Ct. 674, 27 L.Ed.2d 701, the Court said that "(o)nly in cases of proven harassment or prosecutions undertaken by state officials in bad faith without hope of obtaining a valid conviction and perhaps in other extraordinary circumstances where irreparable injury can be shown is federal injunctive relief against pending state prosecutions appropriate." 401 U.S. at 85, 91 S.Ct. at 677. See also Dyson v. Stein, 401 U.S. 200, 203, 91 S.Ct. 769, 771, 27 L.Ed.2d 781."

The pronouncements of this Court in *Mitchum vs. Foster* are quite clear and precise; they leave no room for interpretation or clarification. This Court has reaffirmed the role of the Federal Courts as the protector of the citizens' federal rights. This Court has now settled the long-pending question as to whether or not 28 U.S.C. 2283 is an absolute bar to injunctions against State Court proceedings.

In holding that Section 1983 is an Act of Congress that falls within the expressly authorized exceptions of Section 2283, Justice Stewart said:

> "Section 1983 was thus a product of a vast transformation from the concepts of federalism that had prevailed in the late 18th century when the anti-injunction statute was enacted. The very purpose of Section 1983 was to

> interpose the federal courts between the States and the people, as guardians of the people's federal rights — to protect the people from unconstitutional action under color of state law, "whether that action be executive, legislative or judicial." Ex parte Virginia, 100 U.S. 339, 346, 25 L.Ed 676. In carrying out that purpose, Congress plainly authorized the federal courts to issue injunctions in Section 1983 actions, by expressly authorizing a "suit in equity" as one of the means of redress. And this Court long ago recognized that federal injunctive relief against a state court proceeding can in some circumstances be essential to prevent great, immediate, and irreparable loss of a person's constitutional rights. Ex parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714; cf. Truax v. Raich 239 U.S. 33, 36 S.Ct. 7, 60 L.Ed. 131; Dombrowski v. Pfister, 380 U.S. 479, 85 S.Ct. 1116, 14 L.Ed.2d 22. For these reasons we conclude that, under the criteria established in our previous decisions construing the anti-injunction statute, Section 1983 is an Act of Congress that falls within the "expressly authorized" exception of that law."

Contrary to the allegations contained in the petition, it is obvious from a reading of the opinions below that those opinions do not conflict with this Court's opinion in *Younger vs. Harris* or *Dombrowski vs. Pfister*, 380 U.S. 479 (1955), and the companion cases to *Younger*. Quite to the contrary, the District Court, after noting that it had the benefit of this Court's decision in *Younger vs. Harris* and its companion cases, stated:

> "This Court must determine whether the facts of this case fall within the ambit of the "special circumstances" exception expressed in Young. 328 F.Supp. 392."

After reviewing the facts and the evidence at length and in great detail, the District Court stated:

> "... this Court considering all of the evidence finds that Garrison undertook his baseless investigation (of the Kennedy assassination) with the specific intent to deprive Shaw of his rights under the First, Fifth and Fourteenth Amendments to the Constitution of the United States. Moreover, in an action based on Title 42 U.S. Section 1983, specific intent is not a necessary element. See Monroe vs. Pate 365 U.S. 187, 81 S.Ct. 473, Five L.Ed. Section 492 (1961); Whirl vs. Kern, 407 F.2d 781, 5 Cir. Ct.App. 1969, Certiorara Denied, 396 U.S. 901, 90 S.Ct. 210, 24 L.Ed. 2nd. 177 (1969)."

Again, after reviewing additional facts and evidence at length, the Court concluded:

> "Considering all of the evidence adduced at the hearing of this matter, the Court finds that the pending prosecution was brought in bad faith and that such bad faith constitutes irreparable injury which is great and immediate. The Court finds that this is a case of exceptional and extremely limited circumstances."

The Appellate Court, after reviewing the record, the findings of the District Court, and the applicable law, concluded:

> "In the present case, the District Court found that 'the perjury charge was brought in bad faith and for purposes of harassment.' 328 F. Supp. at 400. That finding is not 'clearly erroneous.' F.R. Civ. P. 52(a). See Duncan vs. Perez, 5th Cir. 1971, 445 F. 2d 557, 560. See also Taylor vs. City of Selma, 337 F. Supp. 1191 (S.D. Ala. 1971). Both were post-Younger cases. The finding of a bad-faith prosecution establishes irreparable injury both great and immediate for purposes of the comity restraints discussed in Younger. We conclude that Younger presents no bar to the issuance of an injunction."

VII.

CONCLUSION

The prosecution of Clay Shaw by Jim Garrison, District Attorney for the Parish of Orleans, State of Louisiana, commenced on March 1, 1967. It was then that Garrison, acting in bad faith, misusing and abusing the legal machinery of the State for his own personal aggrandizement, and without hope of obtaining a valid conviction, personally ordered Shaw arrested, and charged with having conspired with Lee Harvey Oswald and David W. Ferrie to assassinate John F. Kennedy, late President of the United States. After forty-one days of trial, the jury, after deliberating for less than fifty-five minutes, unanimously acquitted Shaw.

On the next working day, Garrison continued his persecution of Shaw. Garrison continued to act in bad faith and to misuse and abuse the legal machinery of the State, for his own personal aggrandizement, and without hope of obtaining a valid conviction, by personally charging Shaw with perjury. Garrison claimed that Shaw lied when he took the stand in his own defense at the conspiracy trial and testified that he did not know, and had never been acquainted with either Lee Harvey Oswald or David W. Ferrie. The continuing harassment of Shaw by Garrison has caused him irreparable injury "both great and immediate". The continuing harassment of Shaw by Garrison has at long last been terminated and ended by the injunction issued by the Trial Court, and affirmed by the Appellate Court. The actions of the courts below under the "special circumstances" of this case are eminently correct in light of this Court's decisions in *Younger vs. Harris* and *Mitchum vs. Foster*. Shaw's federal right to be free from bad faith prosecutions has been preserved and protected. This Court should continue to enforce the protection afforded Shaw by the decisions of the courts below by denying this Application for a Writ of Certiorari.

It is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

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CERTIFICATE

It is certified that copies of the foregoing Answer of Respondent in Opposition were served on Petitioner this date by mailing same to his counsel of record as required by Rule 33-1 of this Court.

New Orleans, Louisiana, October ____, 1972.

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